

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEVANTE B. HARRIS,
Plaintiff,

v.

M. DOCANTO,
Defendant.

No. 1:20-cv-00042-DAD-GSA (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 17)

Plaintiff Devante B. Harris is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 26, 2021, the assigned magistrate judge issued findings and recommendations, recommending that this action be dismissed with prejudice due to plaintiff's failure to state a claim. (Doc. No. 17.) Specifically, the findings and recommendations concluded that plaintiff had failed to allege what facts led plaintiff to believe defendant acted against him out of retaliation. (*Id.* at 7–8.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 8.) On January 4, 2022, plaintiff filed objections to the pending findings and recommendations, which were deemed timely filed by the assigned magistrate judge. (Doc. No. 21.) Therein, plaintiff advances that if he is given another chance to file an amended

1 complaint, he can allege the requisite facts to sustain a claim for retaliation in violation of his
2 First Amendment rights. (*Id.*)

3 In reviewing plaintiff's objections, the court notes that plaintiff does appear to list facts
4 which might fill in the gaps identified by the assigned magistrate judge. As such, although the
5 court will adopt the findings and recommendations and dismiss plaintiff's first amended
6 complaint (Doc. No. 16), the court will grant plaintiff one final opportunity to file an amended
7 complaint in an attempt to cure the pleading deficiencies noted by the magistrate judge. Plaintiff
8 is warned that failure to cure the deficiencies identified in the findings and recommendations in
9 any amended complaint he elects to file will result in this case's dismissal with prejudice.

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
11 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's
12 objections, the court finds the findings and recommendations to be supported by the record and
13 by proper analysis.

14 Accordingly,

- 15 1. The findings and recommendations issued on October 26, 2021 (Doc. No. 17) are
16 adopted;
- 17 2. Plaintiff's operative complaint is dismissed due to plaintiff's failure to state a
18 claim;
- 19 3. Plaintiff is granted leave to file a final amended complaint;
- 20 4. Any amended complaint must be filed with the court within thirty (30) days of
21 service of this order;
- 22 5. This matter is referred back to the assigned magistrate judge for further
23 proceedings.

24 IT IS SO ORDERED.

25 Dated: **February 7, 2022**

26 
UNITED STATES DISTRICT JUDGE